



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 26, 2019 Government Records Council Meeting

Tory Tyler
Complainant

Complaint No. 2017-30

v.

Passaic County Prosecutor's Office
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council ("Council") considered the March 19, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because Executive Order No. 9 (Hughes, 1963) provides that "rap sheets" are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6. See also Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of March, 2019

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 29, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting**

**Tory Tyler¹
Complainant**

GRC Complaint No. 2017-30

v.

**Passaic County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of criminal “rap sheets” for five (5) witnesses in relation to State v. Tory Tyler, Indictment No. 05-07-1042.

Custodian of Record: Lisa A. Verlardi
Request Received by Custodian: January 25, 2017
Response Made by Custodian: January 26, 2017
GRC Complaint Received: February 10, 2017

Background³

Request and Response:

On January 18, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 26, 2017, the first (1st) business day following receipt of said request, the Custodian responded in writing denying access to the requested records as exempt from disclosure, citing the “National Crime Prevention and Privacy Compact ... N.J.S.A. 53:1-20.5 through N.J.S.A. 53:1-20.37 and N.J.A.C. 13:59-1.1 through N.J.A.C. 13:59-2.4.”

Denial of Access Complaint:

On February 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted an OPRA request dated January 18, 2017 to the Custodian, and the Custodian responded to his request January 26, 2017. The Complainant asserted that the Custodian unlawfully denied him access to the responsive records.

¹ No legal representation listed on record.

² Represented by William J. Pascrell, III (Paterson, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:

On March 2, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 25, 2017, and responded in writing on January 26, 2017. The Custodian stated that she did not perform a search because the requested records were exempt from disclosure.

The Custodian stated that she lawfully denied access to the responsive records because they are exempt under the N.J.A.C. 13:59-1.2, which prohibits disclosure of a person’s criminal history (“rap sheet”) for non-criminal justice purposes except to certain persons or entities. The Custodian asserted that N.J.A.C. 13:59-1.6(c) prohibits a public employee from permitting any other person to access information stored in the central repository of the State Bureau of Identification (“SBI”), National Crime Information Center (“NCIC”), or any other state’s repository of computerized criminal history record information. Additionally, the Custodian noted that the New Jersey State Police, the Department of Corrections, and adult county correctional facilities all maintain regulations barring disclosure of criminal “rap sheets.”

The Custodian also cited N.J.S.A. 53:1-32 (“National Crime Prevention and Privacy Compact”)⁴, N.J.S.A. 53:1-20.5 through N.J.S.A. 53:1-20.37, and N.J.A.C. 13:59-1.1 through N.J.A.C. 13:59-2.4 (Law and Public Safety statutes and regulations, respectively) in support of her denial. The Custodian further cited Executive Order No. 9 (Hughes, 1963), and Executive Order No. 69 (Whitman, 1997), in support of her denial. The Custodian stated that the Executive Orders are applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). The Custodian referenced the Council’s decisions in The Westfield Leader v. N.J. Div. of State Police, GRC Complaint No. 2004-152 (July 2005) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008) as supporting her argument.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA provides that “[t]he provisions of this act ... shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to ... Executive Order of the Governor ...” N.J.S.A. 47:1A-9(a). Executive Order No. 9 provides that “criminal records required to be made, maintained[,] and kept pursuant to [N.J.S.A. 53:1-20.1] and [N.J.S.A. 53:1-20.2]” are exempt from disclosure. Id. at 2(f). Executive Order No. 9 is relevant with regard to “rap sheets” because N.J.S.A. 53:1-20.1 requires this information be collected and submitted into the criminal history background check database through the SBI. Additionally, N.J.S.A. 53:1-20.2 provides that bureaus of identification are established in “the office of the sheriff and ...

⁴ This compact limits the disclosure of NCIC printouts.

prosecutors . . .” Id. Thus, it follows that any information coalesced by county and State SBIs are exempt from access under OPRA in accordance with Executive Order No. 9 and N.J.S.A. 47:1A-9(a).

The Council relied upon this same analysis in Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018). There the Complainant requested, *inter alia*, criminal “rap sheets,” and the Council held that the requested “rap sheets” were exempt from disclosure under Executive Order No. 9 and N.J.S.A. 47:1A-9(a).

Therefore, because Executive Order No. 9 (Hughes, 1963) provides that “rap sheets” are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6. See also Lewis, GRC 2016-131.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that because Executive Order No. 9 (Hughes, 1963) provides that “rap sheets” are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6. See also Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).

Prepared By: John E. Stewart
Staff Attorney

March 19, 2019